



State of New Hampshire  
**DEPARTMENT OF ENVIRONMENTAL SERVICES**

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095  
(603) 271-3503 FAX (603) 271-5171



G. Thomas Jensen  
32 St. Casimirs Ave.  
Brockton, MA 02402-1828

RE: 70 Deer Cove Road, Ossipee

**NOTICE OF PROPOSED  
ADMINISTRATIVE  
FINE AND HEARING  
NO. AF 01-006**

**February 23, 2001**

**Introduction**

This Notice of Proposed Administrative Fine and Hearing is issued by the Department of Environmental Services, Water Division (the "Division") to G. Thomas Jensen, pursuant to RSA 482-A:13 and Env-C 601.05. The Division is proposing that fines totaling \$2,000 be imposed against Mr. Jensen for the violations alleged below. **This notice contains important procedural information. Please read the entire notice carefully.**

**II. Parties**

1. The Department of Environmental Services, Water Division, is an administrative agency of the State of New Hampshire, having its principal office at 6 Hazen Drive, Concord, NH.
2. G. Thomas Jensen is an individual having a mailing address of 32 St. Casimirs Avenue, Brockton, MA 02402-1828.

**III. Summary of Facts and Law Supporting Claim(s)**

1. RSA 482-A:13 authorizes the Commissioner of the Department of Environmental Services ("DES") to impose administrative fines of up to \$2,000 per offense for violations of RSA 482-A
2. Pursuant to RSA 482-A:13, the Commissioner has adopted Env-C 614 to establish a schedule of fines for violations of RSA 482-A, rules adopted under RSA 482-A, and permits issued under RSA 482-A.
3. RSA 482-A:14, III provides that failure, neglect or refusal to comply with RSA 482-A or rules adopted under that chapter, or an order or condition of a permit issued under RSA 482-A, and the misrepresentation by any person of a material fact made in connection with any activities regulated or prohibited by RSA 482-A shall be deemed violations of RSA 482-A.
4. G. Thomas Jensen is the owner of certain property on Ossipee Lake located at 70 Deer Cove Road in Center Ossipee, NH, more particularly identified on Town of Ossipee tax maps as Tax Map 35, Lot 49 (the "Property").
5. In 1996, following receipt of complaints regarding several docks located along the Deer Cove shorefront in Ossipee, Division personnel reviewed documentation regarding the status of structures along Deer Cove. Specifically, the Division was evaluating whether certain docks in Deer Cove, most of which were seasonal, met the criteria for grandfathered status under RSA

482-A.

6. By letter of March 14, 1996, DES advised the Deer Cove Shorefront Owners Association ("DCSOA") of its findings regarding the grandfathered status of the Deer Cove docks. Among the docks referenced was a seasonal dock owned by Mr. Jensen, referenced in the March 14, 1996 letter as Dock #10. In that letter, DES stated that the Jensen seasonal dock "is new or has been moved." DES concluded that Mr. Jensen's seasonal dock was not a grandfathered structure. A copy of the March 14, 1996 letter was sent to Mr. Jensen.

7. On May 30, 1997, DES issued a Letter of Deficiency to Mr. Jensen alleging that he reinstalled an illegal seasonal dock in waters of the state without a permit from the DES. The LOD included the following findings:

The Jensen dock lost any grandfathered status it may have by changing the location of an existing dock. Interviews with several of the current owners and abutters in the area reveal that the Jensen dock changed in location from its recently installed location.

Mr. Jensen's dock lost any grandfathered status it may have by combining the historical dock with the "Marshall" dock.

Interviews of several current and past property owners in the area reveal that any historical dock that existed was no longer than 30' so the Jensen dock has changed in dimensions. After being notified of the state wetlands law, and being notified of the [DES's] wetlands investigation, Mr. Jensen reinstalled his illegal dock without a permit and is subject to an [sic] enforcement powers the [DES] possesses.

8. In its May 30, 1997 Letter of Deficiency, the Division requested that Mr. Jensen permanently remove the seasonal dock from any surface water, wetland or bank thereof.

9. By letter of June 23, 1997, DES advised the DCSOA that DES had completed a review of additional documents and information regarding the status of docks within Deer Cove. In its June 23, 1997 letter, DES reiterated that Mr. Jensen's seasonal dock was not a grandfathered structure. A copy of the June 23, 1997 letter was sent to Mr. Jensen.

10. On August 16, 2000, DES received a complaint signed by a group of waterfront property owners on Deer Cove. In the complaint, the property owners allege that "Mr. Jensen has put his non-permitted dock into the waters of Ossipee Lake in front of his cottage every year for the past 10 years."

11. On August 25, 2000, Division personnel inspected the Property. The inspection revealed the following deficiencies:

- a. The Jensen seasonal dock had been reinstalled in waters of the state without a permit from DES.
- b. The seasonal dock was constructed of four separate sections with the following dimensions: Section 1 starting at the shore had approximate dimensions of 2' x 10'; Sections 2 and 3 (combined) had approximate dimensions of 4' x 16'4"; Section 4 had

approximate dimensions of 3' x 20'3".

c. The entire length of the seasonal dock was approximately 46'7"

12. RSA 482-A:3, I states that "[n]o person shall excavate, remove, fill, dredge or construct any structures in or on any bank, flat, marsh, or swamp in and adjacent to any waters of the state without a permit from [DES]."

13. Ossipee Lake is a water of the state as defined in RSA 482-A:4, II.

14. Wt 101.78 defines structure to include "something installed, erected or constructed. Structure(s) include, but are not limited to, the following: fence, dock, breakwater, post, pile, building, bridge, culvert and wall."

15. Env-C 614.02(d) defines a Class I violation, for which the specified fine is \$500, as including "[u]nauthorized construction or modification of a seasonal pier, wharf, or other similar docking structure listed under Wt 402, with 2 or less slips, including pre-existing slips."

16. Env-C 614.06(b) defines an extraordinary violation, for which the specified fine is \$2,000, as including "[c]ommitting repeated violations on the same or different property or project."

#### **IV. Violations Alleged**

1. G. Thomas Jensen has violated RSA 482-A:3, I by constructing a seasonal dock in waters of the State without a permit from DES. Because Mr. Jensen reinstalled the illegal seasonal dock after receiving notice that was not grandfathered, the Division believes this is an extraordinary violation.

#### **V. Proposed Administrative Fines**

1. For the violation identified in IV.1 above, the Division is seeking a fine of \$2,000 pursuant to Env-C 614.06(b).

**The total fine being sought is \$2,000.**

#### **VI. Hearing, Required Response**

You have the right to a hearing to contest the Division's allegations before the fine is imposed. A hearing on this matter has been scheduled for **Monday, March 19, 2001 at 10:30 a.m** in **Room C- 110** of the DES offices at **6 Hazen Drive** in Concord, N.H.

**Pursuant to Env-C 601.06, you are required to respond to this notice. Please respond no later than March 9, 2001, using the enclosed form as follows:**

1. If you plan to attend the hearing, please sign the appearance (upper portion) and return it to James Ballentine, DES Enforcement Paralegal, as noted on the form.

2. If you choose to waive the hearing and pay the proposed fine, please sign the waiver (lower portion) and return it **with payment of the fine** to Mr. Ballentine.

3. If you wish to discuss the possibility of settling the case, please sign the appearance and return it to Mr. Ballentine **and** call Mr. Ballentine to indicate your interest in settling.

You are not required to be represented by an attorney. If you choose to be represented by an attorney, the attorney must file an appearance and, if a hearing is held, submit proposed findings of fact to the person conducting the hearing.

**If you wish to have a hearing but are unable to attend as scheduled**, you must notify Mr. Ballentine at least one week in advance of the hearing and request that the hearing be rescheduled. If you do not notify Mr. Ballentine in advance and do not attend the hearing, the hearing will be conducted in your absence in accordance with Env-C 204.09.

## **VII. Determination of Liability for Administrative Fines**

Pursuant to Env-C 601.09, in order for any fine to be imposed after a hearing, the Division must prove, by a preponderance of the evidence, that you committed the violation(s) alleged and that the total amount of fine(s) sought is the appropriate amount under the applicable statute and rules. Proving something by "a preponderance of the evidence" means that it is **more likely than not** that the thing sought to be proved is true.

If the Division proves that you committed the violation(s) and that the total amount of fine(s) sought is the appropriate amount under the applicable statute and rules, then the fine sought will be imposed, subject to the following:

\* Pursuant to Env-C 601.09(c), the fine will be **reduced by 10%** for each of the circumstances listed below **that you prove, by a preponderance of the evidence**, applies in this case:

1. The violation was a one-time or non-continuing violation, **and** you did not know about the requirement when the violation occurred, **and** the violation has not continued or reoccurred as of the time of the hearing, **and** any environmental harm or threat of harm has been corrected, **and** you did not benefit financially, whether directly or indirectly, from the violation.
2. At the time the violation was committed, you were making a good faith effort to comply with the requirement that was violated.
3. You have no history of non-compliance with the statutes or rules implemented by DES or with any permit issued by DES or contract entered into with DES.
4. Other information exists which is favorable to your case which was not known to the Division at the time the fine was proposed.

**\*\*\*\*\*IMPORTANT NOTICE\*\*\*\*\***

**The hearing that has been scheduled is a formal hearing.** The hearing will be tape recorded, and all witnesses will testify under oath or affirmation. At the hearing, the Division will present testimony and evidence to try to prove that you committed the violation(s) alleged above and that the fine(s) should be imposed. **The hearing is your opportunity to present testimony and evidence that you did not commit the violation(s) and/or that the fine(s) should not be imposed, or that the fine(s) sought should be reduced.** If you have any evidence, such as photographs, business records or other documents, that you believe show that you did not commit the violation(s) or that otherwise support your position, you should bring the evidence to the hearing. You may also bring witnesses (other people) to the hearing to testify on your behalf.

**If you wish to have an informal meeting to discuss the issues, you must contact Mr. Ballentine at (603) 271-6072 to request a prehearing conference.**

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Information regarding this proposed fine may be made available to the public via DES's Web page ([www.des.state.nh.us](http://www.des.state.nh.us)). If you have any questions about this matter, please contact James Ballentine, DES Enforcement Paralegal, at (603) 271-6072.

**COPY**

Harry T. Stewart, P.E.  
Director, Water Division

Enclosures: (NHDES Fact sheet #CO-2 1999)

cc: Rene Pelletier, Manager, Land Resources Management Program  
Gretchen Rule, DES Enforcement Coordinator  
Susan Alexant, DES Rules & Hearings Attorney  
Harry T. Stewart, P.E., Director  
Ossipee Conservation Commission  
Ossipee Board of Selectmen  
Marjory Swope, NHACC  
Michael Walls, DOJ/EPB  
Richard W. Head, DES (File #00-1695)